

**AGREEMENT TO PURCHASE**

Date: **November 5, 2021**

I/We the undersigned Buyer(s) ("Buyer") offer to purchase Tract(s) \_\_\_\_\_, being approx. \_\_\_\_\_ (±) acres of land in Wells County, Indiana, as identified by reference to the same tract number(s) in the attached **Exhibit A**, together with the improvements and permanent fixtures, if any, presently existing on said land (the "Property"), and being one or more of the tracts put up for bids at the public auction conducted on this date by Schrader Real Estate and Auction Company, Inc. ("Auction Company") on behalf of Darnella Falls, Cheryl Romine and Robert Graves (collectively, "Seller"). This offer incorporates the terms and conditions set forth herein, the aerial auction tract map attached as **Exhibit A** and the auction announcements attached as **Addendum A** (collectively, this "Agreement").

1. **PURCHASE PRICE.** The purchase price is \$ \_\_\_\_\_, to be paid via wired funds at closing (plus expenses charged to Buyer, less applied Earnest Money and any other credits due Buyer, as provided in this Agreement). The purchase price shall be adjusted at closing if and only if an adjustment is applicable in accordance with the terms of Addendum A.
2. **EARNEST MONEY.** Concurrently with this offer, Buyer shall deliver to Auction Company the sum of \$ \_\_\_\_\_ (the "Earnest Money"), to be held in escrow, delivered to the closing agent at or prior to closing, and applied to the purchase price at closing.
3. **TAXES AND ASSESSMENTS.** "Seller's Taxes" refers to: (a) real estate taxes assessed against any tax parcel that includes any part of the Property for the first part of the calendar year in which the closing occurs, **prorated** on a calendar year basis to the date of closing, and all prior years; and (b) any drainage or other special assessments attributed to any such tax parcel and last payable without a penalty on or before the closing date. Any unpaid Seller's Taxes shall be withheld from Seller's proceeds at closing and paid directly to the county; *provided, however,* any portion of Seller's Taxes not payable at the time of closing shall be estimated based on 100% of the amount last billed for a calendar year and the amount thus estimated (as adjusted for any tax parcel split and prorated to the date of closing) shall be paid via credit against the sums due from Buyer at closing, with no further settlement or adjustment after closing. Buyer shall then pay all real estate taxes and assessments due after closing to the extent attributed to the Property.
4. **SURVEY.** A new survey shall be obtained if and only if obtained in accordance with the provisions of Addendum A.
5. **DEED; TITLE INSURANCE.** The Property shall be conveyed by **Warranty Deed** (subject to the Permitted Exceptions), to be furnished at Seller's expense. Seller shall furnish a commitment, updated to a date after the Auction and prior to closing, for the issuance of a standard owner's title insurance policy in the amount of the purchase price insuring marketable title to the Property in Buyer's name, subject to standard exceptions, conditions and requirements and subject to the Permitted Exceptions (the "Final Title Commitment"). At closing, Seller shall pay for the cost of issuing a standard owner's title insurance policy in accordance with the Final Title Commitment.
6. **PERMITTED EXCEPTIONS.** Buyer agrees to accept title, title insurance and any survey subject to and notwithstanding any of the following matters (collectively, the "Permitted Exceptions"): (a) existing roads, utilities and drains; (b) any visible or apparent use; (c) any variation between a deeded boundary line and a fence line, field line, ditch line or other visible or apparent occupancy or occupancy line; (d) any easement, condition, restriction or other matter of record (except liens); (e) any outstanding right or severance as to minerals; (f) any recorded oil and gas lease, active or not; (g) a lien for property taxes or assessments not yet payable; (h) any matter disclosed in this Agreement; and/or (i) any matter (except liens) referenced or shown in the preliminary title insurance schedules described in Addendum A.
7. **CLOSING.** Closing shall be held **on or before December 6, 2021** or as soon as possible after said date upon completion of the survey, if applicable, the Final Title Commitment and Seller's closing documents and upon obtaining any required approval of tracts and/or tract divisions by the local planning officials. The closing shall be held at the office of **Metropolitan Title of Indiana, 117 S. Johnson St., Bluffton, IN (Tel: 260-824-0200)**, or otherwise as mutually agreed. If Seller is unable to convey the Property in conformance with the requirements of this Agreement, either party may terminate this Agreement by written notice to the other and, in the event of such termination by either party, Buyer shall receive the Earnest Money as Buyer's sole and exclusive remedy; *provided, however,* prior to any such termination by Buyer, Buyer must give Seller sufficient written notice of the nonconformity to enable Seller to cure the nonconformity and Seller shall have the right to extend the closing date for up to 30 days after receiving such notice in order to cure such nonconformity.
8. **RISK OF LOSS.** The Property shall be conveyed at closing in substantially its present condition, normal wear and tear excepted. Seller assumes the risk of loss and damage until closing. Seller's insurance may be canceled as of the closing date.
9. **POSSESSION.** Possession shall be delivered in accordance with Addendum A. Seller shall pay for all utilities until possession is delivered.
10. **INCLUDED / EXCLUDED ITEMS.** Notwithstanding any other provision, the "Property" includes or excludes any item that is specifically included or excluded according to Addendum A or any residential disclosure form signed by Seller. Propane tanks are excluded unless otherwise provided.
11. **THE PROPERTY IS SOLD "AS IS, WHERE IS", WITHOUT ANY WARRANTY OF ANY KIND AS TO ITS CHARACTER OR CONDITION OR ITS SUITABILITY FOR ANY PARTICULAR USE OR PURPOSE. IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. IN NO EVENT SHALL SELLER OR AUCTION COMPANY BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES.**
12. **REMEDIES.** If the Earnest Money is not effectively paid in accordance with this Agreement *or* if this sale fails to close due to Buyer's default (each a "Buyer Default"), Seller shall have the right to recover 10% of the purchase price as liquidated damages and the right to give notice terminating Buyer's right to acquire the Property (without prejudice to the right to recover liquidated damages). Upon such termination, Seller shall have the absolute and unconditional right to re-sell the Property free and clear of any right or claim of Buyer. Buyer agrees that 10% of the purchase price is fairly proportionate to the amount of Seller's damages due to a Buyer Default, which damages would otherwise be uncertain and difficult to ascertain. If such liquidated damages are adjudicated as unenforceable, Seller may recover actual damages plus attorney fees and expenses. If this sale fails to close due to Seller's default: (a) Buyer shall have the right to demand and receive a refund of the Earnest Money and, upon such demand and receipt, this Agreement shall be terminated in all respects; or (b) at any time prior to such termination, Buyer may elect instead to seek specific performance. If this sale fails to close, the Earnest Money shall be retained in escrow pending disbursement instructions: (i) signed by both parties (or by one party authorizing disbursement to the other); or (ii) in a final court order. In the event of a Buyer Default, Buyer agrees to sign and deliver a release of the Earnest Money for payment of the liquidated damages due Seller and, if Buyer fails to do so, Seller shall have the right to recover (in addition to any other recovery) attorney's fees and other expenses thereafter incurred by Seller in seeking to enforce any right or remedy. In a lawsuit to enforce a right or remedy under this Agreement, the prevailing party shall recover attorneys' fees and expenses and **ANY RIGHT TO A TRIAL BY JURY IS WAIVED.**
13. **AGENCY.** Auction Company and its affiliated agents represent only Seller, not Buyer. This Agreement is between Buyer and Seller. Auction Company and its agents and representatives shall not be liable for any defect or deficiency in any land, improvements, fixtures or equipment.
14. **1031 EXCHANGE.** Each party shall reasonably cooperate if another party intends to structure the transfer or acquisition of the Property as part of an exchange under 26 U.S.C. § 1031 ("Exchange"). This Agreement may be assigned for purposes of an Exchange, but the assignor shall not be released from any obligation. A party is not required to assume or incur any additional obligation in connection with another party's Exchange.
15. **GENERAL PROVISIONS.** This Agreement shall bind and benefit the parties and their respective heirs, personal representatives and successors. This Agreement constitutes the entire agreement between Buyer and Seller regarding the Property. Neither party is relying upon any other statement or promise and neither shall be bound by any purported oral modification or waiver. Time is of the essence. All terms of this Agreement shall be read and construed together as a harmonious whole and, unless otherwise provided or required by the express terms of this Agreement, shall survive closing. This Agreement may be executed in multiple counterparts, all of which together shall constitute the same instrument. The electronic transmission of a signed counterpart via email, fax or a commonly-used electronic signature service such as DocuSign® shall have the same effect as the delivery of an original signature.
16. **ACCEPTANCE DEADLINE.** This offer shall be deemed automatically withdrawn and the Earnest Money shall be returned to Buyer if this offer is not accepted by Seller in writing on or before 11:59 pm on **November 5, 2021**.

Printed Name(s) of Buyer(s): \_\_\_\_\_

Signature(s) of Buyer(s): \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Deed to: \_\_\_\_\_ Lender/Contact: \_\_\_\_\_

**EARNEST MONEY** in the amt. of \$ \_\_\_\_\_ received by: \_\_\_\_\_ on \_\_\_\_\_, 2021

**ACCEPTED BY SELLER** on this **5th** day of **November, 2021**:

Sign: \_\_\_\_\_ Sign: \_\_\_\_\_ Sign: \_\_\_\_\_  
(Dardanella Falls) (Cheryl Romine) (Robert Graves)



# EXHIBIT A

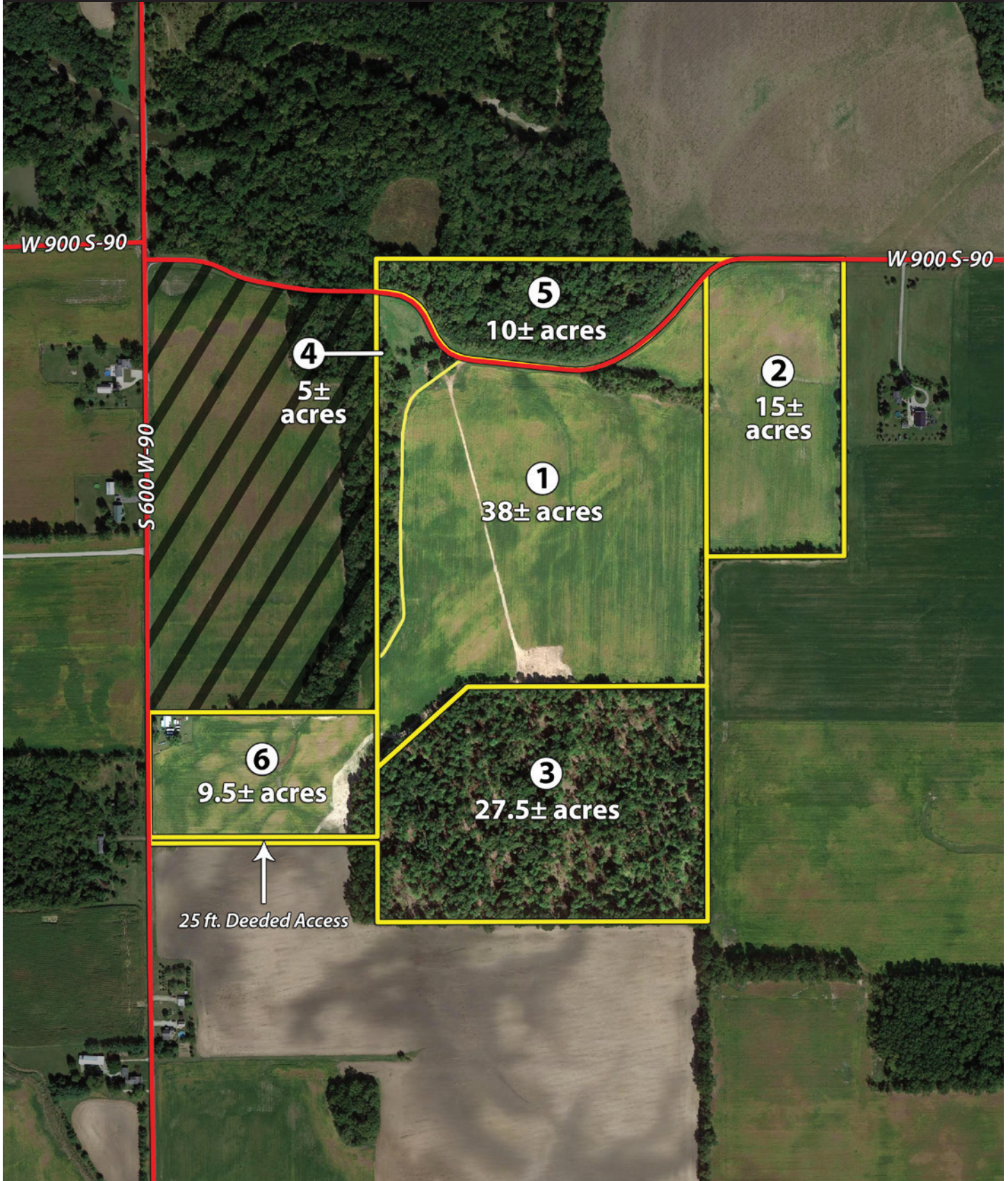
## Revised Auction Tract Map

Buyer(s): \_\_\_\_\_

Seller: \_\_\_\_\_

Auction Date: November 5, 2021

Pt. N2 Sec. 19-T25N-R11E (Chester Twp.) in Wells County, Indiana



Boundary lines and/or acreages depicted in the marketing materials and auction tract maps, including this Exhibit A, are approximations and are provided for identification and illustration purposes only. They are not provided or intended as survey products or as authoritative representations of property boundaries and/or acreages.

I/We have read this Addendum and agree to these auction conditions.

Buyer(s): \_\_\_\_\_

Sellers: \_\_\_\_\_

## ADDENDUM A

### SCHRADER REAL ESTATE AND AUCTION COMPANY, INC.

Auction Marketing Specialists Nationwide

**Date:** November 5, 2021

**Owners:** Dardanella Falls, Cheryl Romine and Robert Graves

**Sale Manager:** Al Pfister

SCHRADER REAL ESTATE AND AUCTION COMPANY, INC. welcomes you to bid YOUR price on the real estate offered at this auction.

#### **PART A - BIDDING PROCEDURES TO KEEP IN MIND:**

1. All bidding is open to the public. You will need to raise your hand or call out your bid as the auctioneer asks for bids. It is easy! Don't be bashful! This is a one-time opportunity. Watch the auctioneer and his bid assistants. They will take your bid and will assist you with any questions.
2. A revised auction tract map is included in your Bidder's Packet as **Exhibit A**. You may bid on any tract or combination of tracts or the entire property. Bidding will remain open on individual tracts and combinations until the close of the auction.
3. Bidding will be on a lump sum basis. Minimum bids are at the auctioneer's discretion.
4. Bids are not contingent on financing, so be sure you have arranged financing, if needed, and are able to pay cash at closing.
5. The Sellers are present and we anticipate that the top bid(s) at the close of the auction will be accepted. The final bid(s), however, are subject to the Sellers' acceptance or rejection.

#### **PART B - TERMS OF SALE OUTLINED:**

6. 10% of the purchase price is due as an earnest money deposit at the close of auction. A cashier's check or a personal or corporate check immediately negotiable is satisfactory for the earnest money. The balance of the purchase price is due in cash at closing.
7. The closing will be scheduled in accordance with the Agreement to Purchase in your Bidder's Packet. The targeted closing period is on or before December 6, 2021. However, any tract divisions will be subject to final approval by the local planning officials. If the auction property is not sold together as a whole unit, the scheduling of the closings will depend on the completion of the surveys and approval of the tract divisions.



8. The closing agent's fee to administer the closing will be shared equally (50:50) between Buyer and Sellers. Buyer will pay all costs of any loan obtained by Buyer.
9. Real estate taxes will be prorated to the date of closing. Buyer will assume and pay all assessments, including drainage assessments, if any, that are last payable without a penalty after the date of closing.
10. At closing, Sellers will furnish the deed and owner's title insurance at Sellers' expense in accordance with the terms of Section 5 of the Agreement to Purchase.
11. Buyer agrees to accept title and acquire the property subject to all easements and all other "Permitted Exceptions" as defined in Section 6 of the Agreement to Purchase.
12. Preliminary title insurance schedules dated May 19, 2021 have been prepared by Metropolitan Title of Indiana and are available to review in the auction display area, along with copies of the recorded documents listed as exceptions.
13. As an update to the marketing materials, possession shall be delivered at closing except as follows:
  - a. Possession of the home on Tract 6 shall be delivered 30 days after closing.
  - b. Possession of the cropland shall be delivered subject to the remaining rights (if any) of the current farm tenant for the 2021 crop year. Seller is retaining all rights to the 2021 farm rent.
14. A new survey of all or part of the property to be conveyed at any closing shall be obtained *if and only if*: (a) the conveyance will involve the creation of a new parcel; or (b) the official(s) responsible for recording the deed will not accept the conveyance for recording without a new survey; or (c) Sellers elect to obtain a new survey for any other reason in Sellers' sole discretion.
15. If a new survey is obtained, the survey shall be ordered by the Auction Company and shall be sufficient for the purpose of recording the conveyance, but the type of survey shall otherwise be determined solely by the Sellers. Any survey of adjacent tracts purchased in combination will be for the perimeter only.
16. The cost of any survey obtained in accordance with this Addendum A shall be shared equally (50:50) by Sellers and Buyer.
17. If a new survey is obtained in accordance with the provisions of this Addendum A, the purchase price shall be adjusted proportionately to reflect any difference between the acre estimates shown in Exhibit A and the gross acres shown in the survey; *provided, however*, no such adjustment shall be made for Tract 6 if sold by itself. If Tract 6 is combined with any other tract(s), any applicable adjustment shall be based solely on acres without allocating any value to the home.

18. As shown in Exhibit A, the acre estimates have been revised for purposes of the auction as follows:

<b>ACRE ESTIMATES (±)</b>	Tract 1:	Tract 2:	<b>Tract 3:</b>	Tract 4:	Tract 5:	<b>Tract 6:</b>	Total:
Advertised / Brochure (±)	38	15	27	5	10	10	105
<b>Revised / Exhibit A (±)</b>	38	15	<b>27.5</b>	5	10	<b>9.5</b>	105

19. The acres shown in Exhibit A have been estimated based on: (a) the approximate total acres shown in the property tax records and existing legal descriptions; and (b) an approximate, provisional allocation of the total between the potential new tracts. No warranty or authoritative representation is made as to the number of gross acres or tillable acres included with any tract or set of tracts.
20. Boundary lines and auction tract maps depicted in Exhibit A and the auction marketing materials are approximations provided for identification and illustration purposes only. Flag markers were placed on site prior to the auction as approximate locational references only. Such maps and markers are not provided as survey products and are not intended to depict or establish authoritative boundaries or locations.
21. If a dispute arises prior to closing as to the location of any boundary, the Auction Company may (but need not) terminate the purchase contract by giving written notice of termination to Buyer, but only with the Sellers' consent. Upon such termination, the earnest money will be returned to Buyer and the property may be re-sold free of any claim of Buyer. In lieu of consenting to such termination, Sellers may elect instead to enforce the purchase contract according to its terms.
22. Information booklets have been provided to prospective buyers in printed form and/or via download from the auction website and are available for further review in the auction information area. The information booklets include information obtained or derived from third-party sources, including soil map, topography map, wetlands map, flood zone map, plat map, county GIS map, property tax parcel data and preliminary title insurance schedules. Such information has been provided subject to (and not as a substitute for) a prospective buyer's independent investigation and verification. Although believed to be from reliable sources, the Auction Company disclaims any warranty or liability for the information provided.
23. **Tract 6:** The Seller's Residential Real Estate Sales Disclosure and lead-based paint disclosure forms for the home on Tract 6 are posted and shall be signed by the Buyer of Tract 6 at the end of the auction. The advertised square footage is approximate and has been estimated based on property tax information. No warranty or authoritative representation is made as to the size of the home.
24. Your bids are to be based solely upon your inspection. All property is sold "AS IS" without any warranty. Without limiting the foregoing provisions, Sellers and Auction Company and their respective agents and representatives make no warranty or authoritative representation as to: (a) zoning matters; (b) whether or not the property qualifies for any particular use; (c) the availability or location of utilities; (d) the

availability of any building permit, driveway permit, septic permit or any other permit; or (e) the accuracy of any materials or information prepared or provided by any third party regarding the auction and/or the property.

25. This auction is conducted on behalf of multiple individual co-owners, any of whom may bid separately on his or her own behalf.
26. At the close of the auction, each high bidder shall execute a purchase contract in the form provided in each Bidder's Packet, consisting of the Agreement to Purchase, Exhibit A and this Addendum A. The terms of these documents are non-negotiable.
27. You will be closing on the tract or combination of tracts on which you are the successful bidder in the manner in which you bid at the auction. Deeds shall be recorded in the order designated by the Sellers.
28. Schrader Real Estate and Auction Company, Inc. and its agents and representatives are exclusively the agents of the Sellers.

Thank you for your interest in this offering. If you have any questions, please feel free to talk to one of our representatives.

ANY ANNOUNCEMENTS MADE BY THE AUCTIONEER  
TAKE PRECEDENCE OVER THIS PRINTED MATERIAL.